HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.21418 of 1997

Date: 19.02.2007

Between:

M. Shankar Rao, S/o M. Venkatasubbaiah

…. Petitioner

And

A.P.S.R.T.C., represented by its Managing Director, Musheerabad, Hyderabad and 2 others

…. Respondents

ORDER:

The Proceedings vide No.PM1/255(3)97-PO II, dated 5.8.1997 issued by the first respondent is impugned in this writ petition.

The petitioner was appointed as a Pharmacist Grade-II pursuant to the notification issued by the respondents for recruitment to the said post. He appeared for a written examination on 4.6.1995 and, on being found successful, he was appointed as Pharmacist Grade-II under the Scheduled Caste category. The petitioner underwent medical examination and, on being found fit, was appointed vide proceedings dated 20.09.1995 on the basis of the recommendations of the Departmental Promotion Committee. The petitioner joined duty on 4.10.1995 and ever since has been working as Pharmacist Grade-II. The impugned proceedings dated 5.8.1997 was issued proposing to

terminate his services on the ground that Sri A.V. Krishna Rao was reinstated into service by the Labour Court, and consequent to the award, his services were terminated. Petitioner would contend that the respondent Corporation had issued a notification, had called for candidates from the Employment Exchange and on his name being sponsored, he was selected by a duly constituted Departmental Promotion Committee. Petitioner would contend that on the mere ground that an award was passed by the Labour Court directing reinstatement of Sri A.V. Krishna Rao, who belonged to the O.C. category, the petitioner, who belonged to the Scheduled Caste category, cannot be terminated.

Sri A.K. Jayaprakash Rao, learned counsel for the petitioner, would submit that since the petitioner underwent a regular process of selection and was appointed in the three available posts of Pharmacist Grade-II, out of which one post was reserved for the Scheduled Caste category, the award of the Labour Court directing reinstatement of Sri A.V. Krishna Rao, who belonged to the O.C. category, can, at best, result in the O.C. candidate's selection pursuant to the notification issued in May, 1995 being set aside and not the petitioner, who was appointed in a reserved vacancy. Learned counsel would further contend that the petitioner's services were sought to be terminated contrary to Section 25 (F) of Industrial Disputes Act. He would point out that while the petitioner, pursuant to the interim orders passed by this Court continues to work as Pharmacist Grade-II for over a decade, subsequently four vacancies in the post of Pharmacist Grade-II had arisen, which vacancies were sought to be filled up, Sri A.V. Krishna Rao had subsequently been removed from service and another employee by name Govinda Rao, who was also working as Pharmacist Grade-II had resigned. Learned counsel would submit that a number of vacancies had arisen subsequent to the

selection process whereunder the petitioner was selected and there is no reason to seek termination of the services of the petitioner.

Where a person is selected through a regular selection process against a notified vacancy reserved for the Scheduled Castes, his appointment cannot be set at naught on the mere ground that the award of Labour Court had directed reinstatement of the services of a Pharmacist Grade-II, who belonged to the O.C. category. While an O.C. candidate could replace another from the open category, permitting him to replace a Scheduled Caste candidate would be in violation of the rule of reservation. The fact, however, remains that the impugned order is merely a show cause notice and it is only when a show cause notice is issued by an authority, who is not competent to do so or is passed without jurisdiction would this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, interfere. Existence of the subsequent vacancies to which a reference has been made by Sri A.K. Jayaprakash Rao, learned counsel for the petitioner, is not borne out by the material on record. Ends of justice would be met if the petitioner is permitted to submit an additional reply to the show cause notice within a period of four weeks from the date of receipt of a copy of this order and the competent authority is directed to consider the additional reply and pass appropriate orders in accordance with law, assigning reasons, in support of its conclusions within a period of three months from the date of receipt of such representation. Needless to state that till final orders are passed by the competent authority, the interim order passed by this Court earlier shall continue to remain in force.

The writ petition is disposed of accordingly. No costs.

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RAMESH RANGANATHAN, J

Date: 19th February 2007

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